

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: (954) 566-8855

PREPARED BY: Tom Moss

SUBJECT: Litigation report

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: Litigation Report

REPORT IN BRIEF:

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S):

Attachment(s): Updated litigation report.



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TOWN ATTORNEY LITIGATION REPORT

DATE: January 22, 2009

FROM: John C. Rayson
Thomas P. Moss

RE: Litigation Report Update

1. PARK CITY MANAGEMENT CORP. vs. TOWN OF DAVIE AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION: Park City filed suit alleging the Town is responsible for maintenance of a median strip. Park City filed a Motion for Partial Summary Judgment, which was granted by the Court. The Court found that the Town is responsible for maintenance of the subject median per the terms of the annexation agreement. The Town filed an appeal. Both parties have filed their appeal briefs and are now awaiting a ruling by the Court of Appeal.
2. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: The parties attended mediation in this case in June 2008, but failed to reach a settlement. The case has now been set for trial.
3. ALSINA vs. GONZALEZ and the TOWN OF DAVIE: This is a code enforcement case that concerns an encroaching patio onto neighbor's (Gonzalez) property. The Town has imposed \$60,000 in fines due to the continuing violation. Alsina filed a lawsuit for adverse possession against their neighbor, and sought an injunction to prevent the Town from assessing or collecting any fines until the adverse possession claim against Gonzalez is adjudicated. The Court denied Alsina's motion for injunction, stating that the Special Magistrate had authority to impose the fines and the Court could not interfere with the Special Magistrates' findings and rulings. Thus, the Town can continue to assess fines as long as the violation continues. As of this date, the parties are still litigating and the Town is merely a by-stander to this action.
4. NOVASTAR vs. MELANIE RODRIGUEZ, TOWN OF DAVIE, et al: Mortgage foreclosure case. The Town has a recorded Order Imposing Administrative Fine. Final Judgment has been entered which recognizes and preserves the Town's lien rights. Thereafter, Rodriguez filed for bankruptcy and, as a result, the foreclosure

sale has been postponed. Upon sale of the property, the Town will receive any excess proceeds to satisfy its lien.

5. DEUTSCHE BANK vs. THEODORE COLLIER, TOWN OF DAVIE, et al: This is a mortgage foreclosure case. The Town was included because it has a recorded Order Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$22,400. The Town responded to the foreclosure complaint by asserting the lien rights as an affirmative defense.
6. DEUTSCHE BANK vs. TOM HARVEY, TOWN OF DAVIE, et al.: This is a mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Compliance Lien in the amount of \$1,800. On January 7, 2009, the Court denied Deutsche Bank's motion for summary judgment due to lack of due diligence in serving the homeowner with the lawsuit. As the Town's lien is inferior to the mortgage, the Town will recover any excess proceeds following sale of the property and satisfaction of the mortgage.
7. FIRST RESOLUTION INVESTMENT CORP. vs. GREG ATKINS AND TOWN OF DAVIE (GARNISHEE): This is a garnishment action in the State of Iowa. The former Town Attorney filed an Answer to the Garnishment on July 12, 2007. The Town has not been notified of any subsequent action and the Town Attorney continues to await further action, if any.
8. BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY vs. JOHNNY WILLIAMS, et al.: This is a Mortgage Foreclosure action. The Town has a code enforcement lien recorded against the property. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover money only if there are surplus funds following the sale of the property.
9. BP LOANS, LLC (50%) AND MEISTER FINANCIAL GROUP, INC. (50%) vs. TOP VIDEO & PRODUCTIONS, USA, INC., a Florida Corporation, et al.: This is a Mortgage Foreclosure action. The Town of Davie has a code enforcement lien recorded against the property. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover only if there are surplus funds following the sale of the property.
10. N & D HOLDING, INC., a Florida Corporation vs. Town of Davie: This is a Declaratory Judgment action challenging the Town's zoning scheme. The Town filed a motion to dismiss, which was granted. N & D then filed an amended complaint. On June 6, 2008, the Town filed its motion to dismiss the amended complaint, which was again granted. N&D appealed, and the parties are now awaiting a ruling by the Court of Appeal.

11. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Diamond III LLC and Broeren Russo Builders of Florida, LLC.): This was an appeal of a code violation. Southern Waste Systems appealed the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. The Town thereafter agreed to remand the case to the Special Magistrate to modify the final order. This case is now closed.
12. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Flamingo Village Corp. and American Engineering & Construction, Inc.): This was an appeal of a code violation. On February 29, 2008, Southern Waste Systems appealed the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. The Town prevailed on the appeal and the Final Judgment stands.
13. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., PAUL BANGE ROOFING, INC: This is a code violation case. The violators have filed a Motion to Dismiss Code Violation. The case has been continued several times as the Town was waiting for a ruling in the appeal of the SWS/Flamingo Village case, which involved the same issues.
14. U.S. BANK NATIONAL ASSOCIATION vs. RONALD LANDAU, TOWN OF DAVIE, et al.: This is a Mortgage Foreclosure action. The Town of Davie has a code enforcement lien recorded against the property. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover money only if there are surplus funds following the sale of the property.

15. REOWTIE ROY vs. 305 DEVELOPERS, LLC., TOWN OF DAVIE, et al.: This is a Mortgage Foreclosure action. The Town of Davie has a code enforcement lien recorded against the property. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover money only if there are surplus funds following the sale of the property.
16. THE TOWN OF DAVIE vs. CHARLES SCOTT, et al.: This is a code enforcement lien foreclosure action filed by the Town. All relevant parties have failed to file answers and have been defaulted. A Final Judgment of foreclosure has been submitted to the Court and the Town is waiting for a public sale date. Any proceeds from the sale will go to satisfy the Town's lien.
17. THE TOWN OF DAVIE vs. MARK ROCCI, et al.: This is a code enforcement lien foreclosure action filed by the Town. All relevant parties have failed to file answers and have been defaulted. Final Judgment of foreclosure has been entered by the Court and a public sale date is set for March 4, 2009. Any proceeds from the sale will go to satisfy the Town's lien, or the Town may bid on the property.
18. JENNIFER AHLQUIST vs. THE TOWN OF DAVIE and JOHNATHON SANDERS: This is a negligence action against the Town resulting from alleged inappropriate conduct of a police officer (Sanders). The police officer previously entered a plea in a criminal case resulting from the same alleged conduct. The Town is represented by Attorney George Roberts.
19. SONIA BORRERO, et al. vs. THE TOWN OF DAVIE: This is a new class action lawsuit filed by residents of the Palma Nova Mobile Home Park alleging false statements by the Town concerning the closure of Palma Nova Mobile Home Park. The Town is represented by outside counsel in this matter. No substantive proceedings have taken place as the case was recently filed.
20. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, et al: This is a code enforcement case concerning the alleged violation of the Town's franchise agreement for waste hauling. The Town is represented by Attorney Brian Hole of Holland & Knight LLP. According to Mr. Hole, this case has been stayed pending the resolution of the Federal case filed by Southern Waste Systems against the City of Coral Springs, Waste Management and Broward County.
21. KILPATRICK vs. THE TOWN OF DAVIE: This is an employment case pending in Federal Court alleging the wrongful termination of a police officer. Attorney George Roberts represents the Town. The case is set for trial in June 2009. Mr. Kilpatrick also has a pending case before the Town's pension board. Settlement negotiations between the Town, the police union and Mr. Kilpatrick are ongoing.
22. LEONARD DEPAOLA vs. THE TOWN OF DAVIE: This is an employment

case pending in State Court alleging wrongful termination of a fire department employee. Attorney Michael Burke represents the Town. The Town originally prevailed in this action, but the Court of Appeal reversed the lower Court and the case is now active again. Mr. Burke is vigorously defending this case and is preparing a motion for summary judgment which will be heard by the trial court.